of his position under the first and second appellants he had little choice but to go along with them. For the sentences imposed on him we substitute the following: on the first charge one day's imprisonment *and* either a fine of $10,000 or in default six months, and on the second charge a fine of $10,000 or in default six months. As the two offences were akin or intimately connected with each other, following the principle set out in *N.N. Burjorjee* v. *Emperor*,[8] we order that if the fines are not paid the sentences of imprisonment in default shall run concurrently.*

As regards the second appellant, he was sentenced to two years on the first charge of forgery and $25,000 or in default nine months on the charge of CBT. This appellant played a more important role than the third appellant. It was his expertise in accounting and in company law that made possible these crimes. The degree of his crimes is also more serious: as Managing Director he held a position of great trust and was employed and expected to look after the bank's property and affairs generally, and yet as a willing and able lieutenant, he showed the way to the first appellant. Had he dug in his heels, these crimes might not have been committed. In view of this we are of the opinion that the total period this appellant should serve in prison is three years, and because of the principle in the above-cited case we substitute for the sentences imposed on this appellant a sentence of three years on each charge, the sentences to run concurrently.

As regards the first appellant, he was sentenced to six months on the forgery charge and to a fine of $15,000 or in default six months on the abetment of CBT charge. We are of the opinion that he was the principal actor in this drama. But for him and for his support for the big fight, these crimes might not have been committed and his co-accused who looked up to him and were loyal to him might not have got into trouble. But now the latter have to endure the loss of professional and personal reputation, and in view of this and of the need for people in public life to show a good example to those below them and of the serious breach of trust placed in him by the members of the bank who were poor people from rural areas who have a right to expect their leaders not to touch a penny of money entrusted to his care, we are of the opinion that this appellant should serve a longer period in prison than the second and on the principle stated in *Burjorjee* we substitute for the sentences imposed by the trial judge a sentence of four years on the first charge and three years on the second charge, the sentences to run concurrently.

Appeals dismissed.

Solicitors: *Sri Ram, Chan & Chia; Datuk Rajasooria & Son; Kadir, Tan & Ramli.*

* When the third appellant appeared in the Federal Court on Tuesday, February 28, 1978, after having failed to obtain special leave to appeal from the Privy Council, the Lord President stated that when the judgment was delivered the court had overlooked section 283(b)(4) of the Criminal Procedure Code, and that as the intention of the court was and is that the third appellant should serve (i) one day and (ii), in the event of his failing to pay the fines of $20,000, a total of six, not twelve, months, the warrant of commitment will be so worded, if the third appellant failed to pay the fines. The latter chose to pay the fines. See [1978] 2 M.L.J. at p. cli.

AHMAT BIN GANI & ORS. v. SUPERINTENDENT OF LANDS AND SURVEYS, FIRST DIVISION

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat F.J. and Tan Chiaw Thong J.) January 20, 1978]

[Kuching — Federal Court Civil Appeal No. 180 of 1976]

Land Acquisition — Appeal against Collector's award — Functions of court — Onus on appellant to show that amount of compensation is inadequate — Difference in conditions of title — Sarawak Land Code (Cap. 81).

In this case the appellants appealed against awards made by the learned judge of the High Court sitting with two assessors in a land reference to the court. The learned trial judge having considered the topographs of each lot in the lands acquired and the other evidence and submissions of learned counsel, had increased the awards made by the Collector.

Held: (1) the appellants have not succeeded in showing that the learned judge's assessment was wrong. An appellate court ought not to reject the judge's assessment and embark upon a fresh valuation of its own unless it was satisfied for good reasons that the judge's assessment must be wrong;

(2) in this case the learned judge had not taken into account the difference in the conditions of title in respect of the lands acquired, in that some were held under agricultural titles and some under open titles. The awards should be adjusted by adding the sum of $100 per acre to the amounts awarded in respect of the lands held under open titles.

Cases referred to:-

(1) *Collector of Land Revenue* v. *Alagappa Chettiar* [1971] 1 M.L.J. 43.

(2) *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands and Surveys, First Division* [1968] 1 M.L.J. 293.

(3) *Kho Choon Tee* v. *Superintendent of Lands and Surveys, Third Division* [1972] 1 M.L.J. 265 at p. 268.

(4) *Mohani Mohan Banerji* v. *Secretary of State* A.I.R. 1921 Cal. 193.

(5) *Narsinghdas* v. *Secretary of State* A.I.R. 1925 P.C. 91.

(6) *Collector, Sconi* v. *Dadoo* A.I.R. 1969 M.P. 28.

(7) *In re Sorabji Jamsedji Tata* (1908), 10 Bom. L.R. 696.

(8) *Ataul Huq* v. *Secretary of State* (1910), 11 Cal. L.J. 393.

(9) *Vyricherla Narayana Gajapatiraju* v. *Revenue Divisional Officer, Vizagapatan* A.I.R. 1939 P.C. 98 at p. 103.

FEDERAL COURT.

Matthew Chan for the appellants.

Zaidi Khaldin Zainie for the respondent.

Tan Chiaw Thong J. (read by Lee Hun Hoe C.J. (Borneo)): This is an appeal against the awards made by the learned High Court Judge, Kuching, sitting with two assessors in a land reference to the court under the Land Code (Cap. 81).

The appellants were registered proprietors of 15 parcels of land which have been compulsorily acquired by the Government for the purpose of residential and town development. In the land reference the date for the determination of the amount of compensation i.e. the market value to be awarded for the 15 parcels of land (hereinafter called "the lands acquired") was the date of the publication of the *gazette* notification under section 47 of the Land Code. This *gazette* notification was published in the *Sarawak Government Gazette* of January 16, 1970 and therefore that is the date for the determination of the market value of the lands acquired.

In the High Court, Kuching, both assessors concurred with the judgment of the learned judge.

The lands acquired are listed below in the order in which they were respectively held by the twelve appellants.

Description	*Area*	*Condition*	*Registered Proprietors*
Lot 65 Block 206 K.N.L.D.	3.04 acres	Open Title	Ahmat bin Gani (1st Appellant)
Lot 48 Block 206 K.N.L.D.	2.36 acres	Agricultural Title	Rashid bin Ibrahim (2nd Appellant)
Lot 47 Block 206 K.N.L.D.	2.73 acres	Agricultural Title	Ester Eyam binti Suleiman (3rd Appellant)
Lot 51 Block 206 K.N.L.D.	4.06 acres	Agricultural Title	Hariah binti Ajiz (4th Appellant)
Lot 32 Block 206 K.N.L.D.	2.81 acres	Open Title	Teram bin Drahim (as representative) (5th Appellant)
Lot 28 Block 206 K.N.L.D.	3.00 acres	Open Title	Bujang bin Dol (6th Appellant)
Lot 8 Block 206 K.N.L.D.	5.49 acres	Open Title	Fatimah binti Shaik Ahmad (one-third) Majenah binti Haji Gapar (two-thirds) (7th & 8th Appellants)
Lot 2 Block 206 K.N.L.D.	2.61 acres	Agricultural Title	Alice Martin (f) (9th Appellant)
Lot 3 Block 206 K.N.L.D.	2.01 acres	Agricultural Title	Alice Martin (f)
Lot 6 Block 206 K.N.L.D.	1.91 acres	Agricultural Title	Alice Martin (f)
Lot 20 Block 206 K.N.L.D.	3.49 acres	Agricultural Title	Alice Martin (f)
Lot 23 Block 206 K.N.L.D.	5.94 acres	Open Title	Loyar anak Nyibar alias John Loyar (10th Appellant)
Lot 137 Block 206 K.N.L.D.	2.37 acres	Open Title	Gerada (f) anak Ginos (11th Appellant)
Lot 143 Block 206 K.N.L.D.	2.15 acres	Open Title	Gerada (f) anak Ginos
Lot 83 Block 206 K.N.L.D.	3.38 acres	Agricultural Title	Jamruth binti D. Moluding (12th Appellant)

The lands acquired are part of one big block of land which included other parcels which were compulsorily acquired for the same purpose at the same time under the same *gazette* notification. All the parcels of land comprised in this big block are lands situated in a native reserve and held under native land titles. The lands acquired are situated at Sungai Maong, Batu Kawa Road, Kuching, and located some 4 miles from the General Post Office, Kuching. The learned judge found that at the material date, there was no road access, water or electricity supply in the lands acquired, albeit there was a footpath leading to part of the lands acquired. They were undeveloped except for some minor improvements such as the cultivation of rubber and fruit trees. Further, only on one parcel was there a house which, having regard to the amount of compensation awarded in respect thereof, would appear to indicate that it was used for agricultural purposes. Most of the lands acquired were low-lying and subject to frequent floods from Sungai Sarawak in the north, Sungai Maong in the east and Sungai Padada in the west. There was no bus service anywhere near the lands acquired as well as the other parcels of land in the big block of land and access was by means of the sungai or the footpath from Nanas Road West in the east. In respect of the lands acquired, the term of title was 99 years as from 1939. It is clear from Exhibit D2, the comparable sales plan of land, produced by DW1 at the High Court, that the lands acquired are bounded to the north by Sungai Sarawak, to the north-east and east by Sungai Maong and to the north-west and west by Sungai Padada.

After considering the evidence adduced by the parties at the land reference, the learned judge found on analysis that the lands acquired could be classified into three categories, namely, (i) high land not subject to flood; (ii) low-lying land subject to flood; and (iii) undulating land parts of which are subject to flood. He classified under category (i) Lots 65, 48, 28 and 83; under category (ii) Lots 47, 8, 6, 3, 2, 20 and 143; and under category (iii) Lots 51, 32, 23 and 137. He found that in making his awards, the respondent had not taken into account the topography of each lot in the lands acquired, and having considered this factor and other evidence and submissions of learned counsel for the parties, he increased the awards made by the respondent in respect of the lands acquired as follows:—

Lot 65 (Ahmat bin Gani) containing 3.04 acres at $900/- a.c.	$2,736.00
Lot 48 (Rashid bin Ibrahim) containing 2.36 acres at $900/- a.c.	$2,124.00
Lot 47 (Ester Eyam binti Suleiman) containing 2.73 acres at $603/- a.c.	$1,646.19
Lot 51 (Hariah binti Ajiz) containing 4.06 acres at $800/- a.c.	$3,248.00
Lot 32 (Teram bin Drahim) containing 2.81 acres at $800/- a.c.	$2,248.00
Lot 28 (Bujang bin Dol) containing 3.00 acres at $900/- a.c.	$2,700.00
Lot 8 (Fatimah binti Shaik & Anor.) containing 5.49 acres at $603/- a.c.	$3,310.47
Lots 2, 3, 6 and 20 (Alice Martin) containing 10.02 acres at $603/- a.c.	$6,042.06
Lot 23 (John Loyar) containing 5.94 acres at $800/- a.c.	$4,752.00
$900.00 for old attap house) The learned Judge adopted the figures used by the respondent for these 3 items $200.00 for removal costs) $903.00 for fruit trees)	$6,755.00
Lot 137 (Gerada (f) anak Ginos) containing 2.37 acres at $800/- a.c.	$1,896.00
Lot 143 (Gerada (f) anak Ginos) containing 2.15 acres at $603/- a.c.	$1,296.45
Lot 83 (Jamruth binti D. Moluding) containing 3.38 acres at $900/- a.c.	$3,042.00

Apart from Lot 23, the learned judge awarded no damages under section 60(1)(c), (d) and (e) of the Land Code (Cap. 81) in respect of the other 14 lots.

The details of the increases made to the awards given by the respondent are as follows:—

Lot 65 from $1,672.00 to $2,736.00 an increase of	$1,064.00
Lot 48 from $1,350.00 to $2,124.00 an increase of	$ 774.00
Lot 47 from $1,502.00 to $1,646.19 an increase of	$ 144.19
Lot 51 from $2,233.00 to $3,248.00 an increase of	$1,015.00
Lot 32 from $1,405.00 to $2,248.00 an increase of	$ 843.00
Lot 28 from $1,550.00 to $2,700.00 an increase of	$1,150.00
Lot 8 from $2,745.00 to $3,310.00 an increase of	$ 565.00
Lots 2, 3, 6 and 20 from $5,010.00 to $6,043.00 an increase of	$1,033.00
Lot 23 from $5,000.00 to $6,755.00 an increase of	$1,755.00
Lot 137 from $1,303.00 to $1,896.00 an increase of	$ 593.00
Lot 143 from $1,075.00 to $1,296.45 an increase of	$ 221.45
Lot 83 from $1,859.00 to $3,042.00 an increase of	$1,183.00

The learned judge also ordered the respondent to pay interest on the difference between the respondent's awards and the awards made by the court at 4% per annum from the date of the taking of possession of the lands acquired on February 10, 1971 to the date of final payment. He further ordered that each party pays his own costs of the proceedings.

The appellants appeal to this court on a number of grounds but before I deal with them, I would mention the functions of this court on an appeal such as this. In *Collector of Land Revenue* v. *Alagappa Chettiar*[1] which was an appeal from the Federal Court to the Privy Council in respect of an award of compensation made under the Land Acquisition Act, 1960 of West Malaysia, it was held *inter alia* that: —

"(1) the reference to the High Court was not in the nature of an appeal from the collector's award, but by way of original hearing wherein the onus lay upon the applicant to satisfy the court that the amount of compensation awarded was inadequate; and the collector was entitled to call evidence in support of the amount awarded. The judge, assisted by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him;

(2) the Federal Court was entitled to review the inferences and conclusions of the High Court and to draw its own inferences and conclusions. But, where such inferences and conclusions were based upon findings of primary facts which were dependent upon the credibility of the oral evidence of witnesses whom the trial judge alone had the advantage of hearing and seeing, an appellate court ought to accept the High Court's findings of primary fact save in very exceptional cases;

(3) land valuation inevitably involved an element of appreciation and impression. Therefore, an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own unless it was satisfied for good reasons that the judge's assessment must be wrong."

Although the appeal was in respect of compensation awarded under the Land Acquisition Act, 1960 of West Malaysia, the principles there laid down in my view would apply to an appeal relating to an award of compensation made under the Sarawak Land Code. In this connection, reference may also be made to the case of *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands & Surveys, First Division.*[2] In the judgment in that case it was stated at pages 294-295 that: —

"No doubt consideration must be given to the fact, as is well established in reported cases, that land valuation inevitably involves an element of appreciation and impression, as well as some element of local knowledge. The findings of the trial court in such cases, particularly when supported by expert assessors with local knowledge, should be approached with respect and not lightly disturbed. But as was said in an Indian case, depending upon an enactment similar to the Land Code 'as in the case of any other judicial proceedings, the findings must be based upon evidence and legitimate deductions from it, and if there is an appeal, both the evidence and legitimate deductions are subject to reconsideration by the appeal court,' though 'it may be more difficult (to satisfy the appeal court, that the judgment is wrong) in land acquisition appeals than in other cases'. *(Assistant Development Officer* v. *Tayaballi,* A.I.R. 1933 Bom. 361 at page 364)."

It should also be borne in mind that in fixing a figure as compensation, this should not be done *ex vacuo* without a stated foundation. (See *Kho Choon Tee* v. *Superintendent of Lands & Surveys, Third Division.*[3]).

The appellants have put forward five grounds of appeal. Apart from the fifth ground, the matters to which the other four grounds relate had all been advanced before the learned judge who considered them before making his awards. The first two grounds allege that the learned judge was wrong in failing to take into account the relative proximity of the lands acquired from Poh Kwong Park and Nanas Road West areas and in agreeing with the respondent in disregarding developments which were being carried out in Poh Kwong Park and Nanas Road West areas as being irrelevant. The third ground urges that the learned judge should have considered that Native Reserve lands nearer to such development areas fetched higher prices than those farther away. The fourth ground states that the learned judge should have adopted as a general principle, applicable to both Native Reserve lands and Mixed Zone lands, that parcels of land nearer to highly developed areas would be more valuable than those farther away and accordingly, should have made his awards in accordance with this principle. Learned counsel for the appellants sought to demonstrate that the learned judge was wrong by merely taking into account the different topography of the different lots in the lands acquired. It seems clear from the record of the lower court that the learned judge took into account far more matters than this. As already indicated, the matters mentioned in the first two grounds had been put forward to him and he had considered them before making his awards. Learned counsel for the appellants had referred to the compensation awarded to Lots 29 and 31 as well as Lot 21 which was near Poh Kwong Park for the purpose of showing that, having regard to the awards made by the respondent in respect of these three particular lots, it is an indication that lots near an area which was being developed should be valued at a higher rate than lots lying away from such an area. It seems clear from the evidence that in determining the amount of awards in respect of Lots 29 and 31, the respondent took into account the price paid by the registered proprietor in December 1967. This, to my mind, is no support for the contention put forward by learned counsel for the appellants. In making his awards, the learned judge also took into consideration the awards made in respect of Lots 21, 58 and 62. Lot 21 is situated to the north-east of the big block of land, whereas Lots 58 and 62 lie to the west of the big block. They were all in the same native reserve. In respect of Lot 21, the award was $800 per acre; in respect of Lot 58, $603 per acre and in respect of Lot 62, $800 per acre.

Robin Chung York Bin (DW1), the Land Office Valuer, in his evidence stated that Lot 21 was trans-

ferred to the registered proprietor in October 1969 for $5,200, the area being 6.71 acres which would work out at approximately $745.16 per acre. Lot 62 was transferred in July 1970 for $3,300, the area being 4.12 acres. This would work out at approximately $800.97 per acre. Lot 58 was transferred in July 1970 for $2,000, the area being 2.90 acres. This would work out at approximately $689.66 per acre. It seems obvious that in making his awards, the respondent took into account the amount of consideration paid for the respective transfers of these three parcels of land. Hence, the amounts awarded in respect of these three parcels of land in my view are no indication that land within a native reserve which is situated near areas of mixed zone land which are being developed commands a higher price.

Learned counsel for the appellants has also referred to Exhibit D1 relating to comparable sales. These sales all took place within two years before the notification published under section 47 of the Land Code. He has referred to item 4 which relates to Lot 21 which has already been dealt with; item 6 which relates to Lot 8 being the subject of the court reference; item 12 relating to Lot 30; and item 22 relating to Lot 83 which again is the subject of the court reference. In respect of Lot 8, it was transferred on December 31, 1969 for $2,500 at $455 per acre; Lot 30 was transferred on July 22, 1968 for $2,000 at $501 per acre; and Lot 83 was transferred on November 1, 1969 for $2,000 at $600 per acre. Whereas Lot 30 may be said to be comparatively nearer to the development area at Poh Kwong Park and Nanas Road West as well as Lot 8, Lot 83 is situated much farther away to the south. Against the items cited by learned counsel for the appellants, learned counsel for the respondent has cited item 1 relating to Lot 151, item 10 relating to Lot 137 which is the subject of the court reference and item 6 already referred to. He has also cited item 20 relating to Lot 147. In respect of Lot 151, it was transferred on February 7, 1968 for $600 at $380 per acre with some fruit trees. Lot 137 was transferred on August 17, 1969 for $700 at $295 per acre; and Lot 147 was transferred on August 25, 1969 for $1,200 at $444 per acre. Comparing the parcels referred to by learned counsel for both parties, it seems clear to my mind that they do not indicate a general trend that those parcels situated nearer areas which were being developed would fetch higher prices than those situated farther away. Of course, one should not lose sight of the physical proximity of the parcels of land to other lands which were being developed nearby. However, in the particular circumstances of this land reference, it is inevitable and in my view obviously correct to bear in mind their difference in land tenure. It is common ground that lands in Poh Kwong Park and Nanas Road West areas were all mixed zone lands whereas the lands acquired were all lands within a native reserve. In my view, proximity by itself is not a factor on which to base an assessment of market value. To my mind, while having regard to this factor of proximity, one should go beyond that and consider the potentialities of the lands, the subject-matter of the land reference. In this connection, DW1 in evidence stated that the lands near Nanas Road West were more valuable because of the intensive developments taking place in the area and in Poh Kwong Park. He was then referring to mixed zone lands. He further stated that mixed zone sales showed that lands near Nanas Road West were higher in prices than the mixed zone lands at Batu Kawa and added that the assumption that lands near development areas would fetch a higher price would not be applied to native area lands because such an assumption would not be supported by the sales of lands in the area. In this connection, I have already expressed the view that reference to the sales indicated in Exhibit D1 does not show that proximity of land within a native reserve as evidenced by comparable sales supports the contention of the appellants to the contrary. DW1 also stated that there was no potentiality of reserved lands being used for residential purposes in the foreseeable future. In this connection, it has been pointed out that the lands acquired were bounded on the north by Sungai Sarawak, to the north-east and east by Sungai Maong and to the north-west and west by Sungai Padada. There is no evidence to show how these physical features would affect any development within the block of land where the lands acquired are situated but the fact remains, as found by the learned judge, that on the material date the lands acquired were undeveloped except for some minor improvements such as the cultivation of rubber and fruit trees. It is true that "Tribunals assessing compensation must take into account, not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market." (See *Mohani Mohan Banerji* v. *Secretary of State*[4]). In *Narsinghdas* v. *Secretary of State*,[5] it was said that: "It is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired". However, the appellants have not adduced any evidence to show the potentialities of the lands acquired.

No complaint has been made regarding the principles for the assessment of "market value" taken into account by the learned judge, nor in my view could any valid criticism be made in this court. "...the key-note of the doctrine of "potential value" is that the owner of a property, when he throws it in the market for sale, would always base his demands on the potentialities of his property, while a prudent purchaser will calculate only such probabilities as are immediate and capable of practical realization." (See *Collector, Seoni* v. *Dadoo*[6]). "But it does not follow that those potentialities have any present value: for, any demand or signs of enterprise for exploitation of the potentialities may be non-existent. If they are so remote that no purchaser would designate them in his mind so as to give definite values to them, they must be discarded." (See *In re: Sorabji Jamsedji Tata*[7]). "The most lucrative and advantageous way in which the owner can dispose of the land is to be determined with reference to its future utility, but it must not be entirely conjectural. Future utility is a

thing that people have an eye to in buying land and the market price of the land is affected by it; such future utility must, however, be estimated by prudent business calculations and not by mere speculation and impractical imagination." (See *Ataul Huq* v. *Secretary of State*[8]). It is true that the opinions of experts are but opinions which may be accepted only when they are confirmed by the evidence. It is well established that the onus is upon the appellants to show that the awards made by the learned judge were wrong or inadequate. They have not adduced any evidence with regard to the potentialities of the lands acquired. On the other hand, I do not think that it requires an expert to see that because of their being bounded on three sides by rivers, this fact would pose difficulties in their future development, as distinct from their class as lands within a native reserve, the titles of which are by no means impossible to be converted into mixed zone titles. As was stated in the judgment of the Privy Council in *Vyricherla Narayana Gajapatiraju* v. *Revenue Divisional Officer, Vizagapatam*[9] at page 103: "The truth of the matter is that the value of the potentiality must be ascertained by the arbitrator on such materials as are available to him and without indulging in feats of the imagination."

It is for the appellants to show by evidence the potentialities for the lands acquired. Beyond stressing their proximity to certain areas of mixed zone land which were being developed on the material date, they have adduced no other evidence with regard to the matter. As has already been pointed out, proximity itself is no proper indication of potentiality as such. Accordingly, I am of the view that the appellants have failed to show that the learned judge was wrong when he agreed with the respondent in disregarding the developments which were carried out in Poh Kwong Park and Nanas Road West as being irrelevant. They have also failed to show that native reserve lands nearer such areas fetch higher prices than native reserve lands farther away, and that therefore there should be a differentiation made by the learned judge in his awards between native reserve lands situated nearer Poh Kwong Park and Nanas Road West areas, and native reserve lands located farther away. Accordingly, in my judgment, the first four grounds fail.

I now come to the last ground of appeal. This states that the learned trial judge, in making his awards, should have made a blanket award of $550 per acre for all the subject lands, and should then have enhanced the said blanket award of $550 per acre: (a) by giving allowance for the respective topography of the subject lands, and (b) by applying a multiplier of 1:3 (founded on the Government's awards on mixed zone lands of $4,000 per acre near Batu Kawa Road and $12,000 per acre near Poh Kwong Park and Nanas Road West areas) on the said blanket award of $550 per acre based on the situation of the subject lands from Batu Kawa Road and Poh Kwong Park and Nanas Road West respectively. Learned counsel for the appellants has submitted that the best basis for dividing the lands near Batu Kawa and those near the development area in Poh Kwong Park and Nanas Road West is to draw lines dividing them. I do not, with respect, think that this is a proposition justified by principle or authority and I need say no more about it. As to taking into account the topography of the lands acquired, this was duly done by the learned judge. With regard to the suggestion of applying a multiplier of 1:3 as referred to in this ground, all I need say is that to equate lands belonging to one class with lands classified under another class for the purposes of making awards under the Land Code in respect of land acquisition is wrong in principle and not supported by authority. There must be a stated accepted foundation for fixing a figure, otherwise an award would be defective as being an award made *ex vacuo* without a stated foundation. As was held in the *Collector of Land Revenue* v. *Alagappa Chettiar, supra*, land valuation inevitably involved an element of appreciation and impression. Therefore, an appellate court ought not to reject the judge's assessment and embark upon a fresh valuation of its own unless it was satisfied for good reasons that the judge's assessment must be wrong. In relation to this ground, the appellants have not succeeded in showing that for good reasons the learned judge's assessment must be wrong. Accordingly, this ground also fails.

The learned judge does not appear to have taken into account the difference in the conditions of title in respect of the lands acquired. Whereas the rest of the lands acquired were held under agricultural titles, Lots 65, 32, 28, 8, 23, 137 and 143 were held under open titles. It is common knowledge that, from the market value point of view, the latter type of titles has a financial advantage over the former type. I think that this should be reflected in the awards made. I am therefore of the view that, in respect of Lots 65, 32, 28, 8, 23, 137 and 143, an additional sum of $100 per acre should be added to the amounts awarded in respect of each of these parcels and the awards of the learned judge adjusted accordingly. Save to this extent, the appeal is dismissed. Each party to pay his own costs of the appeal.

Lee Hun Hoe C.J. (Borneo) and **Chang Min Tat F.J.** concurred.

Order accordingly.

Solicitors: *Chan, Jugah, Wan Ullok & Co.*

TONG LEE HWA & ANOR. v. MALAYAN BANKING BHD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Ong Hock Sim and Chang Min Tat F.JJ.)
November 14, 1977 and January 25, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 172 of 1976]

Practice and Procedure — Appeal — Notice of appeal filed within time but not served on respondent within time — Fault of clerk of solicitor — Application for extension of time to serve notice of appeal — Application dismissed — Federal Court (Civil Appeals) (Transitional) Rules, 1963, rr. 6, 7 and 13.

In this case the notice of appeal was filed within the one month specified in the rules but a copy of the notice was not served on the respondent at the same time. It was served some considerable time later. The failure was due to the fault of the solicitors' clerk. An application was made for extension of time to serve the notice of appeal on the respondent.